Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

PENNSYLVANIA ASSOCIATION OF EDWARDS HEIRS,
a Pennsylvania non-profit corporation,
Petitioner

vs.

DAVID PAUL RIGHTENOUR; HELEN RIGHTENOUR; DOUGLAS WAYNE EDWARDS; DUDLEY CAROL EDWARDS; ELEANOR R. LONGENECKER; BONNIE BLACK PARSONS; MR. DON WUBE, individually dba "BASIC"; WACHOVIA BANK OF GEORGIA, successor in interest to First National Bank of Georgia, formerly the North Georgia Savings & Loan Association; WACHOVIA HOLDING CORP., a Georgia Corporation; CAPITAL RECOVERY SPECIALISTS; FIS VIDEO; FINANCIAL INVESTMENT SERVICES, INC.; DISCOUNT EXPRESS; MID-ATLANTIC PHONE ASSOCIATES; THE GRACE BAPTIST TABERNACLE; RIGHTENOUR & WEYANDT LUMBER COMPANY, INC.; YOUNG, OAKES & BROWN CO., a professional corporation,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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27 pp

QUESTIONS PRESENTED FOR REVIEW.

A. **WHETHER THERE IS CIVIL LIABILITY UNDER 18 U.S.C. §1964(c) FOR AIDING AND ABETTING VIOLATIONS OF 18 U.S.C.§§1962 (b)(c)(d).**

B. **WHETHER THE SUPREME COURT HOLDING OF CENTRAL BANK OF DENVER v. FIRST INTERSTATE BANK OF DENVER, 511 US 164 IS EQUALLY APPLICABLE TO RICO, 18 USC §§1961-1968**

PARTIES TO THE PROCEEDINGS TO THE U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

A. Pennsylvania Association of Edwards' Heirs

B. Wachovia Bank of Georgia, Successor-in-Interest to the North Georgia Savings and Loan Association.

CORPORATE DISCLOSURE STATEMENT

Pursuant to S.Ct. Rule 29.6, PENNSYLVANIA ASSOCIATION OF EDWARDS HEIRS, states that it has no parent companies, subsidiaries, or affiliates that have issued shares to the public.

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PETITION FOR WRIT OF CERTIORARI

Petioner, Pennsylvania Association of Edward's heirs, by and through its counsel, JUDITH KARNS CISZEK, ESQ. and JOHN P. SMARTO ESQ. respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered on the 14th day of December, 2000.

OPINIONS BELOW

The Third Circuit's judgment is cited as Pennsylvania Association of Edwards Heirs vs. Rightenour, et al., 235 F.3d 839 (3rd Cir. 2000)

JURISDICTIONAL PREDICATE

Pennsylvania Association of Edwards heirs appeals the judgment of the United States Court of Appeals for the Third Circuit entered in the case of the Pennsylvania Association of Edwards Heirs vs. David Paul Rightenour, et al., on December 14, 2000. The United States Supreme has jurisdiction to review the judgment pursuant to 28 USC §1254.

THE STATUTORY PROVISIONS:

Racketeer Influenced and Corrupt Organizations Act 18 USC§§1961-1968, specifically §§1964(c), 1962 (b)(c)(d).

STATEMENT OF THE CASE

The Pennsylvania Association of Edward's Heirs (hereinafter referred to as "Association") filed this RICO action and joined Wachovia Bank of Georgia, predecessor-in-interest to the North Georgia Savings and Loan Association for aiding and abetting RICO predicate acts of wire and mail fraud and to further conspire to commit money laundering and the laundering of monetary instruments 18 USC §§1956 and 1957. Association alleged, in relevant part, that at least $311,000.00 was deposited in the Georgia Bank between 1984 and 1986. The Plaintiff alleges that at least one-half of these funds nearly $50,000.00 is unaccounted for and Wachovia

has never revealed the certain cash deposits of the Association. Petitioner alleged that Wachovia allowed itself to be used as a conduit by aiding and abetting the ultimate disposition of were used for personal loans to Association officers secured by Corporate Certificates of Deposits. In addition, fraudulent schemes of the former officers, resulting in the dissipation of nearly $1.5 million dollars in membership contributions.

The parties proceeded through discovery initially focusing on the statute of limitations. In the summer of 1996, Wachovia filed its first Motion for Summary Judgment averring that the case was time barred. Most of the individual defendants joined in Wachovia's motion and, on January 27, 1997, Chief Judge Donald E. Ziegler denied all motions based upon the statute of limitations.

In May, 1997, Judge Ziegler held a conference between the attorneys which was designed to forge a settlement in the case. Subsequent to the conference, on September 9, 1997, Judge Ziegler issued an 18-month Case Management Order. While the Case Management Order was pending, a panel of the Third Circuit Court of Appeals decided the case of Rolo v. City Investing Company Liquidating Trust, 155 F.3d 644 (3rd Cir. 1998), by applying the United States Supreme Court Case of Central Bank of Denver v. First Interstate Bank of Denver, 511 U.S. 164 to RICO and holding that civil aiding and abetting liability is no longer a viable cause of action pursuant to the RICO Act.

Based on the Rolo, Wachovia filed a second Motion for Summary Judgment. On March 19, 1999, Chief Judge Ziegler granted Wachovia's Motion for Summary Judgment based on Rolo, effectively dismissing it from the lawsuit. In September, 1999, Judge Ziegler held a bench trial against the remaining defendants who were not in bankruptcy, and issued a judgment awarding the Plaintiff $1,952,315.30 against David Paul Rightenour.

On January 27, 2000, Judge Ziegler certified the judgment in favor of Wachovia Bank. Petitioner filed an appeal before the Third Circuit Court of Appeals. Petitioner challenged the Rolo holding, and in particular the Third Circuit's application of the Central Bank reasoning to RICO. The Third Circuit, in affirming the lower court's decision, restated its position that without expressed statutory construction allowing for private civil aiding and abetting liability, the Court would not imply one despite reasonable policy and other considerations to the contrary.

DISTRICT COURT'S JURISDICTIONAL PREDICATE

The Petitioner initiated this case with the filing of a Complaint in the U.S. District Court for the Western District of Pennsylvania. The District Court maintained subject matter jurisdiction over the Petitioner's Federal claims pursuant to 28 USC §1331.

SUMMARY OF ARGUMENT

Petitioner filed the within Petition for review of the judgment in Pennsylvania Association of Edwards Heirs v. Rightenour, et al., which held that aiding and abetting liability could not be pursued under the RICO Act. Petitioner does not directly seek to imply liability from 18 USC §2, the criminal prohibition against aiding and abetting, but argues that it has been well settled that aiding and abetting liability is within the scope and breadth of RICO enhancing its liberal construction and remedial function.

The Petitioner asserts that aiding and abetting liability is cognizable under RICO. Prior to Rolo, the aiding and abetting theory of liability was based on common law civil principles, which effectuates RICO's purpose. See: United States v. Local 560 International Brotherhood of Teamsters 780 F.2d 267 (3rd Cir. 1985); Petro-Tech v. Western Company of North America, 824 F.2d 1349 (3rd Cir. 1987); Jaguar Cars v. Royal Oaks Motor Co., 46 F.3rd 258 (3rd Cir. 1995). Plaintiff asserts that the Supreme Court in Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A. 511 US 164, 128 L.ED. 2nd 119 114 S.Ct. 1439 focused specifically on Section 10b violations of the Securities and Exchange Act of 1934 and not the RICO Act and the extension of the Supreme Court's reasoning in Rolo and Pennsylvania Association of Edwards Heirs is misplaced. Congress mandated that RICO be given broad and liberal interpretation to enhance its remedial function. This Court has held that common law principles which advanced the goals of a particular Federal Statute and can form the basis of a theory of liability in interpreting a Federal Statute. See American Society of Mechanical Engineers v. Hydrolevel Corp. 456 US 556 (1982).

The Petitioner will not mislead this Court, clearly there is no specific language in RICO granting aiding and abetting liability in §1964(c) for violations of §1962(b), (c), and (d). Moreover, clearly there is a reference to 18 USC §2 for violations of §1962(a). Indeed, if it is the current juris prudential posture to estop theories of liability specifically because a statute is silent as to the theory, then the Supreme Court must review the Third Circuit's judgment to establish a procedure for statutory interpretation.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

The Court of Appeals for the Third Circuit applied the holding in this Honorable Court's decision in Central Bank of Denver v. First Interstate Bank of Denver, 511 US 164, 128L. Ed.2nd 119, 114 S.Ct. 1439; initially to Rolo v. City Investing Liquidating Trust, 155 F.3d 644 (3rd Cir. 1998) when it held that since the RICO act does not expressly provide for aiding and abetting liability in its statutory construction, the Court will not imply one. In effect, it is clear that despite nearly two decades of recognition, aiding and abetting liability is no longer cognizable. It should be recognized that the Rolo Court determined whether the criminal aiding and abetting prohibition contained in 18 USC §2 could be applied by reference to RICO, thereby mandating civil aiding and abetting liability. Beyond this in the Pennsylvania Association v Edwards Heirs v. Rightenour, 235 F.839 (3rd Cir. 2000), the Court went further in observing this Court's Central Bank holding by opining that even common law principals which would effectuate RICO's remedial purpose cannot imply an aiding and abetting claim under RICO. This holding, despite the fact that it was precisely common law civil principles which the Third Circuit recognized in Petro-Tech v. Western Company of North America, 824 F.2d 1349 (3rd Cir. 1987) that first held that aiding and abetting liability was cognizable under RICO.

Petitioner filed the within writ because it believes that the Supreme Court long ago established a precedent in Sedima v. Imrex Co., Inc., 473 US 479 (1985) in stating that "if Congress' liberal construction mandate is to be applied anywhere, it is in §1964 where RICO's remedial purposes are most evident", when this Court rejected attempts to engraft certain procedural limitations on civil RICO. See also Tafflin v. Levitt, 493 US 455 (1987), applying a liberal construction and endorsing concurrent state court jurisdiction over civil RICO claims.

Despite the fact that the Third Circuit has gone so far as to recognize the application of 18 USC §2 to aiders and abettors of all §1962 violations, resulting in liability pursuant to §1964(c), this Honorable Court's Central Bank holding, according to the Third Circuit, eliminates aiding and abetting liability under RICO.

Petitioner avers that applying Central Bank to RICO restricts its remedial function and contravenes Congress' intent that RICO be liberally construed. Moreover, it contravenes the precedent of this Court, which has deferred to Congressional intent in the RICO setting and has consistently expanded the purview of the statute.

Though the case law is sparse with regard to the interpretation of Central Bank in the RICO setting, the Second Circuit has held that there is no private right of action for aiding and abetting a RICO violation. Hayden v. Paul, Weiss, Rifkind, Wharton, and Garrison, 955 F.Supp 248 (S.D.N.Y. 1997); and Department of Econ. Develp. v. Arthur Anderson and Co., 924 F.Supp 449 (S.D.N.Y. 1996). However, a recent District Court decision in the case of Bank Brussells Lambert, et al. v. Credit Lyonnais (Suisse) S.A., 2000 US Dist. Lexis 16399 (2000), distinguished Hayden and Arthur Anderson, the Court stated that those cases concerned aiding an abetting RICO violations of §1962, and not claims of aiding and abetting violations of statutes identified in 18 USC §1961(1). The Court noted that both Hayden and Arthur Anderson came to their holdings that there is no private cause of action for aiding and abetting a RICO violations based upon this Court's decision in Central Bank of Denver. The District Court for the Southern District of New York went on to make a distinction between an alleged violation of a predicate offense enunciated 18 USC §1961(1), and alleged violations of §1962. Indeed, the Court went onto hold that aiding and abetting liability is a viable cause of action if the Plaintiff alleges specific violations of the predicate offenses contained §1961(1). Therefore, the Court held that aiding and abetting a violation of 18 USC §1344 is a cognizable predicate offense under RICO.

Pennsylvania Association of Edwards Heirs made allegations that Defendant Wachovia Bank aided and abetting wire and mail fraud, as well as specific direct violations of the money laundering statutes 18 USC §§1956 and 1957. Thus, if this case were venued in the Southern District of New York, a violation of a specific predicate offense can result in aiding and abetting liability. Because, as the reasoning would hold, the individuals are violating the specific statutes contained in §1961(1), therefore, not alleging a violation of §1962(b), (c), or (d). The confusion over the Central Bank decision has only just begun and this Honorable Court should intervene at this stage and review the judgment of the Third Circuit Court of Appeal to clarify whether the Central Bank holding as direct applicability to RICO.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Honorable Court grant the Writ of Certiorari.

Respectfully submitted,

JUDITH KARNS CISZEK, ESQ.
Counsel of Record

JOHN P. SMARTO, ESQ.

March 13, 2001

Filed December 14, 2000

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-3189

PENNSYLVANIA ASSOCIATION OF EDWARDS HEIRS, a Pennsylvania non-profit corporation,

Appellant,

v.

DAVID PAUL RIGHTENOUR; HELEN RIGHTENOUR; DOUGLAS WAYNE EDWARDS; DUDLEY CAROL EDWARDS; ELEANOR LONGENECKER; BONNIE BLACK PARSONS; DON WUBE, individually d/b/a "Basic"; WACHOVIA BANK OF GEORGIA, successor in interest to First National Bank of Atlanta, formerly the North Georgia Savings & Loan Association, formerly North Georgia Bank; WACHOVIA HOLDING CORP., a Georgia Corporation; CAPITA RECOVERY SPECIALISTS; FIS VIDEO; FINANCIAL INVESTMENT SERVICES, INC.; DISCOUNT EXPRESS: MID-ATLANTIC PHONE ASSOCIATES; THE GRACE BAPTIST TABERNACLE; RIGHTENOUR & WEYANDT LUMBER COMPANY, INC.; YOUNG, OAKES BROWN CO., a professional corporation.

On Appeal from the United States District Court
for the Western District of Pennsylvania

District Court Judge: Donald E. Ziegler
(D.C. Civ. No. 93-275 J)

Argued October 24, 2000

Before: BECKER, *Chief Judge,* SCIRICA and FUENTES, *Circuit Judges.*

(Opinion Filed: December 14, 2000)

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OPINION OF THE COURT

FUENTES, *Circuit Judge:*

Appellant Pennsylvania Association of Edwards Heirs ("the Association") appeals from a grant of summary judgment dismissing its complaint, which alleged that Wachovia Bank of Georgia ("Wachovia Bank") aided and abetted in the commission of a RICO violation. In *Rolo v. City Investing Co. Liquidating Trust,* 155 F.3d 644 (3d Cir. 1998), we extended the Supreme Court's reasoning in *Central Bank of Denver v. First Interstate Bank of Denver,* 511 U.S. 164 (1994), to RICO, and held that, because RICO's statutory text does not provide for a private cause of action for aiding and abetting and 18 U.S.C. § 2 cannot be used to imply this private right, no such cause of action exists under RICO. Appellant argues that our holding in *Rolo* leaves open the possibility that a civil aiding and abetting RICO claim could be recognized as a common law civil remedy. We disagree, and hold that *Rolo's* holding extends as well to common law-based RICO civil aiding and abetting claims. Therefore, we will affirm.

I.

The Association is a non-profit corporation dedicated to pursuing a proper settlement of the ancient estate of a Welsh seaman, Robert Edwards, who allegedly owned a significant portion of lower Manhattan, including some areas in Wall Street, that never passed to his rightful heirs. This claim dates back to the initial Dutch and British settlers who formed a colony in lower Manhattan, well before the nation's founding. The Association raised funds through membership contributions by 3,200 prospective heirs, who

each paid $450 to buy an equal share of the professed $24 billion estate. The Association raised a large portion of its membership contributions between 1983 and 1985 when former officers solicited alleged heirs.

By the spring of 1988, the Association discovered that some of its former officers had depleted all of the membership fees for unintended purposes. After electing new officers, the Association began an effort to trace and recoup the money. They discovered that the most significantly involved financial institution was the North Georgia Savings and Loan Association, a predecessor to Wachovia Bank, in which over $300,000 in membership fees had been deposited between 1984 and 1986. The Association contended that Wachovia Bank had aided and abetted the Association's former officers with misappropriating membership funds in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962(b), (c), and (d). Specifically, the Association claimed that Wachovia Bank had aided and abetted RICO predicate acts of mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343, and further conspired to commit money laundering and the laundering of monetary instruments contrary to 18 U.S.C. §§ 1956 and 1957.

According to the Association, its vice-president at the time, a local Baptist preacher named Douglas Wayne Edwards, had a close and personal relationship with the financial institution's president. The Association alleged that Edwards and the Association's treasurer, David Paul Rightenour, wrongly applied for, and received, personal loans from Wachovia Bank's predecessor by using as collateral certificates of deposit belonging to the Association. Allegedly, when Edwards and Rightenour defaulted on the loans, Wachovia Bank's predecessor improperly cashed the certificates and used the proceeds to satisfy any outstanding loan debt. In addition, the Association claimed that $50,000 of a cashed certificate, the proceeds of which were at least partly paid over to Edwards, remained unaccounted. In sum, the Association alleged that Wachovia Bank allowed itself to be used as a conduit by aiding and abetting the fraudulent schemes of its former officers, resulting in the dissipation of nearly $1.5 million in membership contributions.

After having unsuccessfully applied for summary judgment on timeliness grounds, Wachovia Bank filed a second summary judgment motion arguing that the Association's claim against it was barred because

no private cause of action exists under RICO for aiding and abetting. This argument was based on a case we decided during the course of the litigation, *Rolo v. City Investing Co. Liquidating Trust,* 155 F.3d 644 (3d Cir. 1998), which extended the Supreme Court's reasoning in *Central Bank of Denver v. First Interstate Bank of Denver,* 511 U.S. 164 (1994).

In *Central Bank,* 511 U.S. at 177, 191, the Supreme Court had ruled that private aiding and abetting suits were not authorized by § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j. In *Rolo,* 155 F.3d at 656-57, we applied similar reasoning in the RICO context, ruling that a private plaintiff could not maintain a claim of aiding and abetting an alleged RICO violation. The Association responded by relying upon *Jaguar Cars, Inc. v. Royal Oaks Motor Car Co.,* 46 F.3d 258 (3d Cir. 1995), which had been decided after *Central Bank,* but before *Rolo,* and dealt with a RICO aiding and abetting claim on the merits. The Association argued that a conflict exists in this circuit between *Jaguar Cars* and *Rolo,* which should be resolved by rejecting *Rolo.*

In an order entered March 22, 1999, the District Court concluded that *Rolo* was controlling and granted summary judgment in favor of Wachovia Bank. The Court further opined that, to the extent a conflict existed, we would have to resolve it.

II.

Our review of a grant of summary judgment is plenary, and the record is judged by the same standard district courts use. *Witkowski v. Welch* 173 F.3d 192, 198 (3d Cir. 1999). Federal Rule of Civil Procedure 56 governs summary judgment motions. Subsection 56(c) provides, in part, that:

> [t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The moving party has the burden of demonstrating that there is no genuine issue as to any material fact, and summary judgment is to be entered if the evidence is such that a reasonable fact finder could find only for the moving

party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Doherty v. Teamsters Pension Trust Fund*, 16 F.3d 1386, 1389 (3d Cir. 1994).

III.

A.

Prior to *Central Bank*, private aiding and abetting claims relating to § 10(b) of the Securities Exchange Act were widely thought to be legitimate.

> In hundreds of judicial and administrative proceedings in every Circuit in the federal system, the courts and the SEC have concluded that aiders and abettors are subject to liability under § 10(b) . . . . While we have reserved decision on the legitimacy of the theory in two cases that did not present it, all 11 Courts of Appeals to have considered the question have recognized a private cause of action against aiders and abettors under § 10(b) . . . .

Central Bank, 511 U.S. at 192 (Stevens, J., dissenting). However, the Supreme Court dramatically altered the landscape with its decision in *Central Bank*, wherein the majority ruled that, "[b]ecause the text of § 10(b) does not prohibit aiding and abetting, we hold that a private plaintiff may not maintain an aiding and abetting suit under § 10(b)." *Id.*

As the Supreme Court recognized, the judiciary had previously determined that private § 10(b) enforcement actions had been impliedly authorized from the statutory language. *See Id.* at 171. Beyond that, however, the Court emphasized that "[w]ith respect . . . to . . . the scope of conduct prohibited by § 10(b), the text of the statute controls our decision.... We have refused to allow [§ 10(b)] challenges to conduct not prohibited by the text of the statute." *Id.* at 173. Thus, the Supreme Court directed that "the statutory text controls the definition of conduct covered by § 10(b)." *Id.* at 175. Applying this paradigm, the Court wrote:

> Congress knew how to impose aiding and abetting liability when it chose to do so. If . . . Congress intended to impose aiding and abetting liability, we presume it would have used the words "aid" and "abet" in the statutory text. But it did not.

> We reach the uncontroversial conclusion, accepted even by those courts recognizing a § 10(b) aiding and abetting cause of action, that the text of the 1934 Act does not itself reach those who aid and abet a § 10(b) violation. Unlike those courts, however, we think that conclusion resolves the case. It is inconsistent with settled methodology in § 10(b) cases to extend liability beyond the scope of conduct prohibited by the statutory text. To be sure, aiding and abetting a wrongdoer ought to be actionable in certain instances. The issue, however, is not whether imposing private civil liability on aiders and abettors is good policy but whether aiding and abetting is covered by the statute.
>
> . . . . The [§ 10(b)] proscription does not include giving aid to a person who commits a manipulative or deceptive act. We cannot amend the statute to create liability for acts that are not themselves manipulative or deceptive within the meaning of the statute.

Id. at 177-78 (citations omitted). In reaching this holding, the majority also addressed and discounted numerous arguments, including policy considerations, that would have supported a civil aiding and abetting claim relevant to § 10(b). *See id.* at 175-91.

B.

Several years later, in *Rolo v. City Investing Co. Liquidating Trust,* we affirmed the dismissal of a private plaintiff's RICO aiding and abetting claim because we were 1. convinced that a private cause of action for aiding and abetting a RICO violation cannot survive the Supreme Court's decision in [*Central Bank*]." *Rolo, 155* F.3d at *656.* After briefly reviewing *Central Bank's* reasoning, we concluded "that the same analysis controls our construction of the civil RICO provision." *Id.* at *657.*

> Like § 10(b), the text of [RICO] § 1962 itself contains no indication that Congress intended to impose private civil aiding and abetting liability under RICO....
>
> . . . [D]espite the existence of cogent policy arguments in support of extending civil liability to aiders and abettors of RICO violations, under [*Central Bank*], we must "interpret and apply the law as

> Congress has written it, and not [ ] imply private causes of action merely to effectuate the purported purposes of the statute." Because the text of the RICO statute does not encompass a private cause of action for aiding and abetting a RICO violation, "in accordance with the policies articulated in *Central Bank of Denver*", we have no authority to imply one. On this basis, we will affirm the district court's dismissal of the RICO claims ....

Id. (citations omitted). We find this reasoning as fully persuasive today as when we decided *Rolo*, and therefore, reject the Association's argument.

In arguing for a different result, the Association sets forth three arguments, all of which we find unpersuasive. First, the Association submits that *Central Bank's* reasoning is limited to the Securities Exchange Act. However, nothing in *Central Bank* indicates that its reasoning is specific to the particular statute presented in that case. Rather, the majority's reasoning concerning when a private claim for aiding and abetting is available, which hinges on an analysis of statutory language, is equally applicable to RICO as well.

Second, the Association opines that *Rolo is* not dispositive because it is in conflict with *Jaguar Cars*, an earlier but post-*Central Bank* decision, that: (1) reiterated that aiding and abetting liability may be available under RICO, and (2) assessed that issue on the merits. *See Jaguar Cars*, 46 F.3d at 270. This argument lacks merit. As the *Rolo* panel persuasively explained, no conflict really exists. In justifying its holding that, after *Central Bank*, aiding and abetting liability under RICO was no longer available, the *Rolo* court wrote:

> [w]e reach this result despite our discussion of aiding and abetting liability in *Jaguar Cars*, a case decided after [*Central Bank*]. *See* 46 F.3d at 270. *In* Jaguar Cars, *the opinion did not address the impact of [*Central Bank*] on earlier cases that had recognized a private cause of action for aiding and abetting under RICO.* The decision in *Jaguar Cars* focused on whether there had been sufficient evidence to find the defendant liable for aiding and abetting a RICO violation. *See* 46 F.3d at 270. The parties did not challenge the existence of a cause of action for aiding and abetting, and we did not raise the issue *sua sponte*. Although, under this Court's Internal

> Operating Procedures, we are bound by, and lack the authority to overrule, a published decision by a prior panel, *see* I.O.P. 9.1, *we conclude that the discussion of a private cause of action for aiding and abetting a RICO violation in Jaguar Cars does not control our analysis in this case. The decision in* [Central Bank] *was not called to the attention of the panel in Jaguar Cars, and the panel's opinion neither explicitly nor implicitly decided the impact of* [Central Bank] *on the continued availability of a private cause of action for aiding and abetting a RICO violation.*

Rolo, 155 F.3d at 657 (emphasis added). This reasoning is consistent with long established stare decisis principles. *See Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399-400 (1821).

Finally, the Association argues that: (1) common law civil principles require that a private aiding and abetting claim be recognized under RICO, and (2) various policy arguments favor recognizing a private aiding and abetting RICO claim. We reject each of these contentions.

As to the former, acceptance of the Association's common law argument would fundamentally undermine the constrained approach to aiding and abetting liability that the Supreme Court set forth in *Central Bank* and which we subsequently followed in *Rolo*. Moreover, the common law perspective is significantly undermined, if not totally discredited, by the Supreme Court's discussion in *Central Bank* regarding the history of aiding and abetting liability.

> Aiding and abetting is an ancient criminal law doctrine. Though there is no federal common law of crimes, Congress in 1909 enacted what is now 18 U.S.C. § 2, a general aiding and abetting statute applicable to all federal criminal offenses. The statute decrees that those who provide knowing aid to persons committing federal crimes, with the intent to facilitate the crime, are themselves committing a crime.
>
> . . . Congress has not enacted a general civil aiding and abetting statute-either for suits by the Government (when the Government sues for civil penalties or injunctive relief) or for suits by private parties. Thus, when Congress enacts a statute under which a person may sue and recover damages from a private defendant for the

> defendant's violation of some statutory norm, *there is no general presumption that the plaintiff may also sue aiders and abettors.*
>
> Congress instead has taken a statute -by-statute approach to civil aiding and abetting liability.

Central Bank, 511 U.S. at 181-82 (emphasis added and citations omitted). The Supreme Court's language makes it abundantly clear that, in the absence of statutory authorization, there is no presumption in favor of recognizing a civil aiding and abetting claim. Therefore, we must reject the Association's argument that, under common law principles, a civil aiding and abetting claim must be recognized with respect to RICO.

With regard to the policy arguments, *Central Bank* instructs that they are of no avail to the Association unless an unacceptably aberrant result would entail. "Policy considerations cannot override our interpretation of the text and structure of the Act, except to the extent that they may help to show that adherence to the text and structure would lead to a result 'so bizarre' that Congress could not have intended it." *Central Bank*, 511 U.S. at 188 (quoting *Dernarest v. Manspeaker*, 498 U.S. 184, 191 (1991)). The Association is unable to identify any such "bizarre" consequences of any merit. Thus, the controlling issue "is not whether imposing private civil liability on aiders and abettors is good policy but whether aiding and abetting is covered by the statute." *Central Bank, 511 U.S.* at 177. In *Rolo*, we answered that inquiry in the negative with respect to the RICO statute. We accordingly adhere to our prior decision.

IV.

For the reasons explained above, we will affirm the District Court's order.

A True Copy:
Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-3189

PENNSYLVANIA ASSOCIATION OF EDWARDS HEIRS,
a Pennsylvania non-profit corporation,

Appellant,

v.

DAVID PAUL RIGHTENOUR; HELEN RIGHTENOUR;
DOUGLAS WAYNE EDWARDS; DUDLEY CAROL EDWARDS;
ELEANOR LONGENECKER; BONNIE BLACK PARSONS;
DON WUBE, individually d/b/a "Basic"; WACHOVIA BANK
OF GEORGIA, successor in interest to First National
Bank of Atlanta, formerly the North Georgia Savings & Loan
Association, formerly North Georgia Bank; WACHOVIA
HOLDING CORP., a Georgia Corporation; CAPITA RECOVERY
SPECIALISTS; FIS VIDEO; FINANCIAL INVESTMENT SERVICES, INC.;
DISCOUNT EXPRESS; MID-ATLANTIC PHONE ASSOCIATES;
THE GRACE BAPTIST TABERNACLE;
RIGHTENOUR & WEYANDT LUMBER COMPANY, INC.;
YOUNG, OAKES BROWN CO., a professional corporation.

On Appeal from the United States District Court
for the Western District of Pennsylvania

District Court Judge: Donald E. Ziegler
(D.C. Civ. No. 93-275 J)

Argued October 24, 2000

Before: BECKER, Chief Judge, SCIRICA and FUENTES, Circuit Judges.

JUDGMENT

This cause came to be heard on the record from the United States District Court for the Western District of Pennsylvania and was argued by counsel on October 24, 2000.

After careful review of the parties' arguments, it is ORDERED AND ADJUDGED that the order of the District Court entered January 28, 2000 is affirmed. Costs taxed against Appellant The Pennsylvania Association of Edwards Heirs. All of the above in accordance with the opinion of this Court.

ATTEST:

Marcia M. Waldron
Clerk

DATED: December 14,2000

TITLE 18. CRIMES AND CRIMINAL *PROCEDURE*
PART I. CRIMES
CHAPTER 96. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

18 USCS § 1962 (2000)

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

HISTORY:

Added Oct. 15, 1970, P.L. 91-452, Title IX,§ 901(a), 84 Stat. 942; Nov. 18, 1988, P.L. 100-690, Title VII, Subtitle B, § 7033, 102 Stat. 4398.)

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I. CRIMES
CHAPTER 96. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

18 USCS § 1964 (2000)

§ 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter [18 USCS §§ 1961 et seq.] shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

HISTORY:

(Added Oct. 15, 1970, P.L. 91-452, Title IX, § 901(a), 84 Stat. 943; Nov. 8, 1984, P.L. 98-620, Title IV, Subtitle A, § 402(24)(A), 98 Stat. 3359.)

(As amended Dec. 22, 1995, P.L. 104-67, Title I, § 107, 109 Stat. 758.)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA ASSOCIATION OF
EDWARD HEIRS, a non-profit corporation, 93-275J

Plaintiff,

vs.

DAVID PAUL RIGHTENOUR, ET AL.,
Defendants.

ORDER OF COURT

AND NOW this 27th day of Jan. 2000, upon consideration of the motion for Certification and Entry of Judgment filed by Plaintiff, Pennsylvania Association of Edwards' Heirs, it is hereby **ORDERED** that the Plaintiff's Motion is **GRANTED.**

In as much as the sole claim raised by the Plaintiff against the WACHOVIA BANK OF GEORGIA has been dismissed and a separate appeal from that dismissal may reasonably be expected to determine the liability of WACHOVIA BANK OF GEORGIA to Plaintiff, said appeal can no longer interfere with the adjudication of the Plaintiffs' other claims against the remaining Defendants inasmush as those claims have been adjudicated by non-jury trial on September 8 and September 10, 1999. The Court hereby certifies and determines that there is no just reason for delay with regard to the dismissal of Plaintiff's claim against WACHOVIA BANK. The Court, therefore, directs the Clerk to enter judgment in this matter on behalf of Defendant WACHOVIA BANK and against the Plaintiff.

BY THE COURT:

DONALD E. ZIEFLER, Chief Judge